IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 32364 of 2005(C)

PETITIONER:

VASU, S/O. RAMANKUTTY,
ANAKUZHI VEEDU, KADAMPAZHIPPURAM VILLAGE,
OTTAPALAM TALUK.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:
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1. THE ADDITIONAL EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

2. THE ASSISTANT EXCISE COMMISSIONER,
PALAKKAD.

BY GOVERNMENT PLEADER SRI. BENJAMIN PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE MAHAZAR PREPARED BY THE EXCISE INSPECTOR DATED 23.5.2004.

EXT.P2: COPY OF THE DEPOSITION OF PW1 DATED 16.3.2005.

EXT.P3: COPY OF THE DEPOSITION OF PW2 DATED 16.3.2005

EXT.P4: COPY OF ORDER NO.P3-3600/04 DTD 29.4.2005 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: COPY OF ORDER NO.37/APL/2005/AC(X) DTD 12.8.2005 ISSUED BY THE 1ST RESPONDENT.

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P.A. TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO. 32364 OF 2005

DATED THIS THE 19th DAY OF JULY, 2007

JUDGMENT

The petitioner is the registered owner of autorickshaw bearing Registration No.Kl-09/H-1851. The said autorickshaw was seized by the Excise Inspector, Cherpulassery Excise Range on 23.5.2004 in Crime No.15/2004 on the allegation of transportation of arrack in the autorickshaw. Confiscation proceedings were initiated and Ext.P4 order was passed confiscating the vehicle. The said order of confiscation was confirmed by Ext.P5 appellate order. The petitioner is challenging Exts.P4 and P5 appellate orders.

2. The petitioner contends that the petitioner's son Sivadasan was the driver of the autorickshaw. On 23.5.2004 at 7.15 a.m. a person boarded the autorickshaw for journey to Kadampoor. According to the petitioner, the person, who boarded the autorickshaw was a total stranger and after travelling about 1Km, the Excise parties stopped the autorickshaw and on inspection, it was found that the passenger carried a plastic bag in which there was a plastic can containing 5 litres of arrack. It is under the above circumstances that the autorickshaw was seized. The petitioner would contend that the

petitioner had cross examined by the Assistant Excise Inspector and the Excise Guard, who were present at the time of inspection. The Asst. Excise Inspector candidly admitted that it may not be possible for an ordinary person to know that arrack is being carried in the plastic bag. When the question was put to him that the autorickshaw driver had no acquaintance with the passenger, he admitted that he did not know that and he had not conducted any further investigation regarding the same. The Excise Guard examined as PW2 also deposed that it may not be possible to ascertain by sight that the arrack was being carried in the plastic bag and it appeared to him that the auto driver had no knowledge that the passenger was carrying arrack in the bag. On these contentions, the petitioner would seek quashing of Exts.P4 and P5.

3. A counter affidavit has been filed. The counter affidavit does not dispute the averments regarding the depositions of the Asst. Excise Inspector and the Excise Guard. Admittedly, the autorickshaw was being used for carrying passengers on hire. When a person boards the autorickshaw with a plastic bag, the driver of the autorickshaw cannot direct the passenger to open the bag and show the contents to the driver. Simply by sight, the driver cannot know what is contained in the plastic bag. That being so, I do not think that it cannot be said that the driver had not taken proper precaution to see that the vehicle is not used for carrying illicit

arrack, As such I am unable to find Exts.P4 and P5 are sustainable. Accordingly, the same are quashed.

The writ petition is allowed as above.

S. SIRI JAGAN, JUDGE

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